United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 21-0686**
	)	**Issued: April 5, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 26, 2021 appellant filed a timely appeal from a November 6, 2020 merit decision and a March 18, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the March 18, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on September 18, 2020, as alleged; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing.

FACTUAL HISTORY

On September 25, 2020 appellant, then a 36-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 2020 she sustained blurred vision, headaches, nausea, and dizziness when a dolly struck her on the head as she was placing a heavy package on it while in the performance of duty. On the reverse side of the claim form A.S., an employing establishment supervisor, controverted the claim. She contended that appellant could not identify the time or location of the alleged incident, did not notify the employing establishment until September 19, 2020, and waited three days after the alleged incident to seek medical attention.

Appellant provided September 21, 2020 hospital emergency department discharge instructions for a head injury, which noted that she was seen by Dr. Chris Kyrus, an emergency medicine physician, and that a September 21, 2020 computerized tomography (CT) scan of the brain was unremarkable. In an accompanying work slip dated September 21, 2020, Pamela L. Maxie, a physician assistant, held appellant off work through September 23, 2020. She returned appellant to full-duty work, effective September 24, 2020.

In reports dated September 25, 2020, Dr. Gregory A. Marolf, a family practitioner, noted that on September 18, 2020 appellant loaded a heavy package onto a dolly, and the dolly lurched forward and struck her on the forehead. He reported a history of a prior traumatic brain injury with memory loss for which she was under neurologic care and had an eight-hour-a-day work limitation. On examination Dr. Marolf observed mild tenderness to palpation on the forehead at the hairline with mild edema. He diagnosed a head injury and returned appellant to full-duty work.

In a development letter dated October 2, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary information.

In response, appellant provided an October 19, 2020 statement. She noted that on September 18, 2020, while on detail, she placed a heavy package on a dolly and the dolly struck her head. Appellant notified a supervisor at approximately noon that day that she was feeling lightheaded, dizzy, and had a headache. The supervisor directed appellant to sit down in her delivery vehicle and take a break. After approximately 20 minutes, appellant resumed her route. She messaged her manager on September 19, 2020 to ensure that the supervisor she spoke to the prior day had reported the incident. Appellant provided copies of the medical records to her supervisor on approximately September 21, 2020.

In a September 21, 2020 intake form, Lauren H. Gray, a nurse, noted that appellant "hit head on dolly on Friday," having headaches, nausea, and blurred vision.

In reports from September 25 through October 6, 2020, Dr. Marolf diagnosed a closed-head injury with headaches. He restricted appellant to light-duty work as of September 29, 2020.

In October 1 and 15, 2020 reports, Dr. Christopher T. Lee, a physician specializing in occupational medicine, noted appellant's complaints of headaches superimposed on a prior head injury with memory loss. He noted that she had injured herself when a package on a dolly hit her on the head. Appellant was able to continue working and did not seek care until September 21, 2018. Dr. Lee diagnosed an unspecified closed-head injury and opined that it was work related.

On October 9, 2020 OWCP received an authorization for examination and/or treatment (Form CA-16) that was not signed by the employing establishment.[3]

By decision dated November 6, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It noted that she had not provided information clarifying the alleged September 18, 2020 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On an appeal request form dated and received by OWCP on November 24, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She contended that she had been unaware that she should have completed a claim form and that she had copies of text messages exchanged on September 18 and 19, 2020 regarding the alleged injury. Appellant submitted additional medical evidence and copies of medical reports previously of record.

On November 30, 2020 OWCP received a November 6, 2020 report by Dr. Indira Umamaheswaran, a Board-certified neurologist. Dr. Umamaheswaran noted a history of a 2016 head trauma with subsequent headaches, and a September 18, 2020 episode at work when appellant struck her head while carrying and placing a heavy package. She opined that a November 2, 2020 MRI scan of the head and brain did not demonstrate mass effect on the brain.[4] Dr. Umamaheswaran diagnosed chronic post-traumatic headache with acute worsening, and chronic daily headaches.

[3] One of Dr. Marolf's September 25, 2020 reports was written in the attending physician's report, Part B of a Form CA-16 that was not signed by the employing establishment. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). However, as the employing establishment did not sign or authorize the Form CA-16, no contractual obligation was created.

[4] A November 2, 2020 magnetic resonance imaging (MRI) scan of the head and brain demonstrated normal signal throughout the cerebral parenchyma, no evidence of intra or extra axial mass effect on the brain, a small focus of fluid in the left mastoid air cells indicative of possible mastoiditis, and a trace amount of right interior maxillary sinus mucosal thickening.

In a January 14, 2021 letter, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for March 2, 2021 at 9:00 a.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode. OWCP's hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear.

By decision dated March 18, 2021, OWCP determined that appellant had abandoned her request for an oral hearing. It indicated that she received a 30-day advance written notice of the hearing scheduled for March 2, 2021 and that she failed to appear. OWCP further noted that there was no indication in the record that appellant contacted it prior to the scheduled hearing to request a postponement or provide an explanation for her failure to appear at the hearing within 10 days of the scheduled hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[6] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[7] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[9]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of

[5] *Supra* note 1.

[6] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

action.[10] The employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[11] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12]

ANALYSIS -- ISSUE 1

The Board finds that appellant has met her burden of proof to establish that the September 18, 2020 employment incident occurred in the performance of duty on September 18, 2020, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time and place, and in a given manner, is of great probative value and will stand unless refuted by strong or persuasive evidence.[13] Appellant alleged that she sustained a head injury on September 18, 2020 when a dolly lurched forward when she placed a heavy parcel upon it. She provided a detailed account of the incident in her September 25, 2020 claim form and October 19, 2020 statement. Appellant also explained that she notified a supervisor of the injury the same day, and provided copies of urgent care documents to her supervisor on approximately September 21, 2020.

Additionally, appellant provided a consistent description of the September 18, 2020 employment incident to her physicians. September 21, 2020 emergency department intake forms note that appellant had struck her head on a dolly on the previous Friday, which was September 18, 2020. Dr. Kyrus, an emergency medicine physician, signed discharge instructions relating to a head injury. Appellant informed Dr. Marolf on September 25, 2020 that on September 18, 2020 a dolly cart lurched forward when she placed a heavy parcel upon it, striking her in the head. She related the same account to Dr. Lee on October 1, 2020.

As appellant has established that the September 18, 2020 employment incident occurred as alleged, the question becomes whether the incident caused an injury.[14] As OWCP found that appellant had not established fact of injury, it has not evaluated the medical evidence. The Board will, therefore, set aside OWCP's November 6, 2020 decision and remand the case for

[10] *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

[11] *See V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

[12] *N.A.*, Docket No. 21-0773 (issued December 28, 2021); *L.Y.*, Docket No. 21-0221 (issued June 30, 2021); *see M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[13] *Id*.

[14] *N.A.*, *supra* note 12; *see M.H.*, Docket No, 20-0576 (issued August 6, 2020); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

consideration of the medical evidence of record.[15] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted September 18, 2020 employment incident.[16]

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2020 decision of the Office of Workers' Compensation Programs is set aside. The March 18, 2021 decision of the Office of Workers' Compensation Programs is set aside as moot. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: April 5, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[15] *N.A., supra* note 12; *M.H., id., S.M.*, Docket No. 16-0875 (issued December 12, 2017).

[16] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.